Supreme Court, U.S.
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No. 07-340

In The

Supreme Court of the United States

In re Eurica Califorrniaa,

Petitioner.

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

MR. EURICA CALIFORRNIAA*
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**pro se*

QUESTIONS PRESENTED

1. Whether an admission by a Member of the Court that a given act "would be homicide" suffices to require due process to be applied in favor of parties made subject to the given act?

2. Whether a petition for an extraordinary writ of mandamus against a non-judicial public official requires opinions below under Supreme Court Rule 20.3(a), if it is set forth with particularity why courts below cannot grant the relief requested?

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PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Your petitioner, Eurica Califorrniaa, prays that a writ of mandamus will issue in the above-entitled case.

OPINIONS BELOW

The final judgment of the United States District Court for the Central District of California, entered May 25, 1995, and a related order dated May 24, 1995, are attached in appendices A & B respectively.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Supreme Court Rule 20 as provided by 28 U.S.C. § 1651(a).

SUPREME COURT RULE 20.3(a)

The name and office or function of every person against whom relief is sought is as follows: John F. Clark, Director, U.S. Marshals Service. Since 1790, the U.S. Marshal has been historically assigned the task of conducting the death sentences on those condemned by federal courts. The U.S. Marshal has been responsible for protecting abortion clinics and doctors. The relief sought is a stay of execution for gestational children condemned to death by this Court. Mandamus is appropriate because 1) the U.S. Marshal is instrumental in carrying out the sentence of death, and 2) the U.S. Marshal will be instrumental in staying the execution of the sentence of death.

The reason why the relief sought is not available in any other court is set forth with particularity as follows: Inferior courts lack jurisdiction to grant mandamus to stay the execution of gestational children condemned to death by this Court, because this Court has given the U.S. Marshal a mandate to conduct the death sentences nationally.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Due Process Clause of the Fifth Amendment to the Constitution of the United States provides: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

Supreme Court Rule 20.3(a) provides:

> A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

STATEMENT OF THE CASE

Beginning with *Buck v. Bell*, 274 U.S. 200 (1927), the Court has upheld death sentences for gestational children without due process of law. Specifically, the Court in *Buck*

upheld cutting the Fallopian tubes without any regard for a gestational child who may be present in a Fallopian tube at the time of the [illegible]ing. In subsequent cases, the Court extended the sentence of death to gestational children even in the process of childbirth, most recently, *Gonzales v. Carhart*, 550 U.S. ___ (2007). The U.S. Marshal has ministerial duty to conduct federal death sentences. The district court found that the Chief Justice does not have ministerial duty to provide fair trials for gestational children.

REASONS FOR GRANTING THE PETITION

Whether an admission by a Member of the Court that a given act "would be homicide" suffices to require due process to be applied in favor of parties made subject to the given act?

To prove that the Court violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution in allowing a pregnancy to be terminated so as to cause the death of a child, it suffices to show that a Member of the Court recognized that a given act of termination would constitute an act of "homicide" and that the Court subsequently allowed the given act to proceed without due process. As evidence of this proof, during oral reargument in *Roe v. Wade*, 410 U.S. 113 (1973), in responding to a question regarding what has in more recent times become known as partial-birth abortion, Mr. Justice Marshall says, "It would be homicide." Although a written transcript provided by the Oyez Project incorrectly attributes the statement to attorney Mr. Robert C. Flowers, the audio version of the transcript makes it unmistakably clear that it is actually Justice Marshall who declares it to

be homicide. Therefore, for failure to stay the execution of children subject to partial-birth abortion in deference to due process, it is evident that the Court violated the Due Process Clause. *Stenberg v. Carhart,* 530 U.S. 914 (2000); *Gonzales v. Carhart*, 550 U.S. ___ (2007).

The relevant excerpt from the corrected transcript of oral reargument, held October 11, 1972 in *Roe v. Wade*, as heard at approximately 36 minutes into the audio version and forward, reads as follows:

> MR. FLOWERS: Here's what 1195 says – provides:
>
> > "Whoever shall, during the parturition of the mother, destroy the vitality or life in a child in a state of being born, before actual birth and before actual birth – which child would have otherwise been born alive, which – shall be confined to the penitentiary for life, or not less than five years."
>
> JUSTICE MARSHALL: What does that statute mean?
>
> MR. FLOWERS: Sir?
>
> JUSTICE MARSHALL: What does it mean?
>
> MR. FLOWERS: I would think that –
>
> JUSTICE STEWART: That it is an offense to kill a child in the process of childbirth?
>
> MR. FLOWERS: Yes, sir. It would be immediately before childbirth, or right in the proximity of the child being born.
>
> JUSTICE MARSHALL: Which is not an abortion.

MR. FLOWERS Which is not – would not be an abortion, yes, sir. You're correct, sir.

JUSTICE MARSHALL: It would be homicide.

Whether a petition for an extraordinary writ of mandamus against a non-judicial public official requires opinions below under Supreme Court Rule 20.3(a), if it is set forth with particularity why courts below cannot grant the relief requested?

It might have been preferable to have filed this petition without any opinions below, because the U.S. Marshal was not a party to the opinions below. However, the proceedings below were dismissed at the pleading stages, so that anything consistent with the relief sought is eligible for review. Some awkwardness will be involved in any case where due process of law has been grossly neglected. But since a stay of execution directed to the U.S. Marshal is consistent with the relief sought below, this case is properly before the Court.

CONCLUSION

The petition for the writ of mandamus should be granted.

Respectfully submitted,

EURICA CALIFORRNIAA
pro se

SEPTEMBER 2007

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTERED MAY 25, 1995
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY M DEPUTY

FILED MAY 24, 1995
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY M DEPUTY

Eurica Californniaa, Plaintiff, v. William Rehnquist, Chief Justice, Defendant.	)	No. CV 95-0709 HLH ORDER DISMISSING ACTION WITH PREJUDICE AS TO ALL PARTIES

This action is dismissed with prejudice as to all parties.

This Order is a final judgment for purposes of Fed.R.Civ.P. 54(a). It shall be entered pursuant to Fed.R.Civ.P. 58 and 79(a), and served upon the parties.

IT IS SO ORDERED.

Date: May 24, 1995

/s/ _____
HARRY L. HUPP
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case no. CV95-709-HLH (JRx) **Date** May 24, 1995
Title Eurica Californniaa v. William Rehnquist, Chief Justice

PRESENT: HON. **HARRY L. HUPP, JUDGE**
Milli Borgarding, Deputy Clerk
None Present, **Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:
Eurica Californniaa (pro per)
ATTORNEYS PRESENT FOR DEFENDANTS:
Michael Johnson, AUSA

PROCEEDINGS: MOTION TO DISMISS

ORDER (also, if applicable, findings and memorandum opinion):

The motion to dismiss is granted without leave to amend. The action is dismissed by order signed and filed this date. The matter is removed from the calendar of 6/5/95 and decided by this minute order.

Mandate may only be used to control the ministerial (i.e., the non-discretionary or non-judgmental) actions of a public official. The Chief Justice does not have any ministerial duty raised by the complaint or any conceivable amendment to the complaint. There are no legal issues worthy of discussion at oral argument; the matter is therefore removed from the calendar of 6/5/95. The action is dismissed.

A:950709.524

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